

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Charlie Hartford	Team: Squad #8	CCRB Case #: 201908431	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 07/04/2019 9:24 PM, Thursday, 07/04/2019 9:50 PM	Location of Incident: § 87(2)(b) and the 44th Precinct stationhouse	Precinct: 44	18 Mo. SOL 1/4/2021	EO SOL 8/21/2021	
Date/Time CV Reported Mon, 09/23/2019 5:52 PM	CV Reported At: CCRB	How CV Reported: E-mail	Date/Time Received at CCRB Mon, 09/23/2019 5:52 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Anthony Perlmutter	25052	962683	044 DET
2. POM Sean Kelly	22679	959727	044 DET
3. POM Gregory Piro	23344	962696	044 DET
4. SGT Christophe Crain	01266	933719	048 PCT
5. SGT Timothy Burke	03879	950130	044 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Vincent Mauro	18615	958892	044 PCT
2. POM Jorge Flores	07680	954816	044 PCT
3. POM Alonzo Macias	17697	943505	043 PCT
4. POM Joseph Modica	25713	964174	044 PCT
5. POM Andrew Alvarado	23931	962919	044 PCT
6. POM Michael Sheridan	31878	955478	044 PCT
7. POF Hanna Cottignies	00468	966519	044 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Sean Kelly	Discourtesy: At § 87(2)(b) in the Bronx, Police Officer Sean Kelly spoke discourteously to § 87(2)(b)	
B.SGT Christophe Crain	Abuse: At the 44th Precinct stationhouse in the Bronx, Sergeant Christopher Crain authorized the strip-search of § 87(2)(b)	
C.POM Anthony Perlmutter	Discourtesy: At the 44th Precinct stationhouse in the Bronx, Police Officer Anthony Perlmutter made sexually suggestive remarks to § 87(2)(b)	
D.POM Sean Kelly	Discourtesy: At the 44th Precinct stationhouse in the Bronx, Police Officer Sean Kelly made sexually suggestive remarks to § 87(2)(b)	
E.POM Gregory Piro	Discourtesy: At the 44th Precinct stationhouse in the Bronx, Police Officer Gregory Piro made sexually suggestive remarks to § 87(2)(b)	
F.SGT Timothy Burke	Discourtesy: At the 44th Precinct stationhouse in the Bronx, Sergeant Timothy Burke spoke discourteously to § 87(2)(b)	

Case Summary

On September 23, 2019, § 87(2)(b) filed this complaint via the on-line website.

On July 4, 2019, at approximately 9:24 p.m., outside § 87(2)(b) in the Bronx, Police Officer Sean Kelly of the 44th Precinct spoke discourteously to § 87(2)(b) (**Allegation A: Discourtesy**, § 87(2)(g) § 87(2)(g)).

On July 4, 2019, at approximately 9:50 p.m., at the 44th Precinct stationhouse, Sergeant Christopher Crain of the 44th Precinct authorized the strip-search of § 87(2)(b) (**Allegation B: Abuse of Authority**, § 87(2)(g) § 87(2)(g)). PO Kelly, as well as Police Officer Anthony Perlmutter and Police Officer Gregory Piro of the 44th Precinct, allegedly made sexually suggestive remarks to § 87(2)(b) while he was being searched (**Allegations C-E: Discourtesy**, § 87(2)(g) § 87(2)(g)). Sergeant Timothy Burke of the 44th Precinct spoke discourteously to § 87(2)(b) (**Allegation F: Discourtesy**, § 87(2)(g) § 87(2)(b)). § 87(2)(b) was ultimately released with two summonses during the incident.

This case contains body-worn camera footage (BWC) (Board Reviews 08-10).

Findings and Recommendations

Allegation (A) Discourtesy: At § 87(2)(b) in the Bronx, Police Officer Sean Kelly spoke discourteously to § 87(2)(b)

It is undisputed that at approximately 9:24 p.m. on July 4, 2019, the anticrime team consisting of Sgt. Crain, PO Kelly, PO Perlmutter and PO Piro stopped § 87(2)(b) after he was observed jaywalking and fled from officers. It is undisputed that PO Kelly told § 87(2)(b) after he was apprehended that he had dropped “a bunch of fucking weed and shit.” This statement may be heard at 00:34 minutes in PO Kelly’s second BWC video (Board Review 08).

After being presented with body-worn camera footage depicting the above-referenced statement, PO Kelly testified that he made this statement in the heat of the moment and that, in retrospect, he “probably shouldn’t have used that language” (Board Review 03).

Patrol Guide Procedure 200-02 requires that officers treat civilians with courtesy and respect (Board Review 13).

In DCT Case 2013-10143, the Deputy Commissioner of Trials noted that they have “consistently held that while police officers are held to a high standard of conduct, traditional rules of etiquette cannot be applied to stressful enforcement situations” (Board Review 16). In this case, the Deputy Commissioner of Trials cited Disciplinary Case No. 77896/02, in which an officer told a “belligerent and difficult” suspect, “I’ll do whatever the fuck I want out here” and was found not guilty of discourtesy.

§ 87(2)(b), § 87(2)(g)

Allegation (B) Abuse of Authority: At the 44th Precinct stationhouse in the Bronx, Sergeant Christopher Crain authorized the strip-search of § 87(2)(b)

At 02:13 minutes in PO Cottignies’ BWC, and 01:40 minutes in PO Kelly’s third BWC video, § 87(2)(b)

§ 87(2)(b) is depicted admitting that he discarded marijuana while he was being chased by officers (Board Review 08). It is undisputed that Sgt. Crain authorized § 87(2)(b) being strip-searched at the 44th Precinct stationhouse.

In his sworn statement provided September 29, 2020, Sgt. Crain testified that he authorized the strip-search solely because § 87(2)(b) had been discovered to be in possession of marijuana, and because he twitched his legs and moved the lower half of his body while seated at the stationhouse as though he was trying to discard something (Board Review 02). Sgt. Crain stated that in his experience, if someone is concealing contraband at the stationhouse they will often attempt to discard it rather than have it be revealed during a search, even going so far as to drop it on the floor in front of officers and then deny that this happened. Sgt. Crain voiced having no prior familiarity with § 87(2)(b) during his CCRB interview.

None of the other officers involved in § 87(2)(b)'s apprehension – PO Kelly, PO Perlmutter, and PO Piro – cited § 87(2)(b)'s physical movements at the stationhouse as a reason for the search (Board Review 03-05).

§ 87(2)(b)'s behavior at the stationhouse is depicted on numerous officers' BWC: PO Sheridan's video, PO Kelly's third video, PO Piro's second video, and PO Cottignies' video (Board Review 08). At 00:41 minutes and 04:44 minutes in PO Piro's second BWC video, officers can be heard discussing the fact that they are going to "SS" § 87(2)(b). During his CCRB interview, PO Perlmutter was played this latter portion of PO Piro's BWC and affirmed that "SS" referred to "strip-search" in this context.

The BWC footage does not depict § 87(2)(b) moving in a way that could reasonably be interpreted as him attempting to discard contraband. The footage does not depict any officer remarking that § 87(2)(b) is moving in a such a manner, and no officer aside from Sgt. Crain cited § 87(2)(b) making such movements in their CCRB interview. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

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In People v. Hall, 10 N.Y.3d 303, 856 N.Y.S.2d 540, 886 N.E.2d 162 (2008), the Court of Appeals of New York ruled that a strip search must be founded on a reasonable suspicion that the arrestee is concealing evidence underneath clothing (Board Review 11).

In People v. Tisdale, 140 A.D.3d 1759, 32 N.Y.S.3d 427 (App. Div. 4th Dept. 2016), the Supreme Court of New York, Appellate Division, Fourth Department ruled that a defendant's admitted possession of marijuana prior to being arrested cannot by itself justify a strip search (Board Review 14).

§ 87(2)(b), § 87(2)(g)

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Allegation (C) Discourtesy: At the 44th Precinct stationhouse in the Bronx, Police Officer Anthony Perlmutter made sexually suggestive remarks to § 87(2)(b)

Allegation (D) Discourtesy: At the 44th Precinct stationhouse in the Bronx, Police Officer Sean Kelly made sexually suggestive remarks to § 87(2)(b)

Allegation (E) Discourtesy: At the 44th Precinct stationhouse in the Bronx, Police Officer Gregory Piro made sexually suggestive remarks to § 87(2)(b)

In his sworn statement provided October 17, 2019, § 87(2)(b) alleged that the officers who conducted the strip-search made hissing noises as if they were cats, as well as kissing sounds at him during the search (Board Review 01).

PO Kelly, PO Perlmutter, and PO Piro all denied these allegations (Board Review 03-05). PO Perlmutter stated that he would never do “something like that” (Board Review 05). PO Piro noted that strip-searches are “not comfortable for any of us,” that the officers do “not enjoy” them, and further stated that the officers do “not make it a ‘fun’ situation” (Board Review 04). PO Kelly stated during his interview that he would “never even think to do that” and stated that he found the allegation “absolutely ridiculous” (Board Review 03).

§ 87(2)(b), § 87(2)(g)

Allegation (F) Discourtesy: At the 44th Precinct stationhouse in the Bronx, Sergeant Timothy Burke spoke discourteously to § 87(2)(b)

PO Piro’s third BWC video depicts officers engaging in a brief exchange with § 87(2)(b) over him holding onto his sweater top in the 44th Precinct holding cells (Board Review 08). Sgt. Burke is depicted at 01:10 minutes telling § 87(2)(b) “Dude, give us the fucking shirt,” as he snatches § 87(2)(b)’s shirt from his hands.

After being presented with this footage, Sgt. Burke stated that he used profanity with § 87(2)(b) because there were three other prisoners present in the cell, which made it a “dangerous situation,” as prisoners frequently hang themselves with loose articles of clothing (Board Review 06). Sgt. Burke added that while he still did not recall this specific incident, it appeared § 87(2)(b) was not being compliant, and that the cell door was open while the officers were trying to convince § 87(2)(b) to hand over his outer layer of clothing.

Per Patrol Guide Procedure 208-03, individuals in NYPD custody are not allowed to have their belt or shoes in the holding cells, because these items can be used to cause serious harm to themselves or others (Board Review 15).

Patrol Guide Procedure 200-02 requires that officers treat civilians with courtesy and respect (Board Review 13).

In DCT Case 2013-10143, the Deputy Commissioner of Trials noted that they have “consistently held that while police officers are held to a high standard of conduct, traditional rules of etiquette cannot be applied to stressful enforcement situations” (Board Review 16). In this case, the Deputy Commissioner of Trials cited Disciplinary Case No. 77896/02, in which an officer told a

“belligerent and difficult” suspect, “I’ll do whatever the fuck I want out here,” and was found not guilty of discourtesy.

§ 87(2)(b), § 87(2)(g)

Civilian and Officer CCRB Histories

- This is § 87(2)(b) s first CCRB complaint.
- Sgt. Crain has been a member of service for 16 years. In that time, he has been the subject of 41 allegations in 12 other cases.
 - In CCRB 201605621, Sgt. Crain was the subject of a substantiated physical force allegation. Sgt. Crain was found not guilty at a departmental trial.
 - In CCRB 201706153, Sgt. Crain was the subject of a substantiated discourtesy allegation. Sgt. Crain received Command Discipline – A, while the CCRB recommended Command Discipline – B.
 - In CCRB 201805188, Sgt. Crain was the subject of two substantiated discourtesy allegations. Sgt. Crain received Command Discipline – B, consistent with the CCRB recommendation.
 - In CCRB 201708598, Sgt. Crain was the subject of an unsubstantiated allegation regarding a strip-search. The circumstances of the strip-search at issue in the case differ significantly from those at issue here – specifically, the complainant in this case alleged that Sgt. Crain personally conducted a strip-search in the field, and Sgt. Crain denied that any officer performed the search.
- PO Perlmutter has been a member of service for four years. In that time, he has been the subject of eight allegations in three other cases.
 - In CCRB 201808753, PO Perlmutter was the subject of a substantiated allegation discourtesy allegation. He received command level instructions consistent with the CCRB recommendation.
- PO Kelly has been a member of service for five years. He has been the subject of five other allegations in three cases, none of which were substantiated or § 87(2)(g)
- PO Piro has been a member of service for four years. In that time, he has been the subject of 17 allegations in five other cases.
 - In CCRB 201808686 and CCRB 201808753, PO Piro was the subject of a total of four discourtesy allegations, all of which were substantiated. PO Piro received command level instructions for each allegation, consistent with the CCRB recommendation,
- Sgt. Burke has been a member of service for nine years. In that time he has been the subject of 21 allegations in nine other cases.
 - In CCRB 201900379, Sgt. Burke was the subject of a substantiated discourtesy allegation. He received instructions, consistent with the CCRB recommendation.

Mediation, Civil and Criminal Histories

- This case was not eligible for mediation.
- § 87(2)(b) filed a Notice of Claim regarding this incident for \$1,000,000 (Board Review 17).
- § 87(2)(b)

§ 87(2)(b) [Redacted text block]

Squad No.: 8

Investigator: Charlie Hartford Charlie Hartford 12/17/20
Signature Print Title & Name Date

Squad Leader: Ethan De Angelo IM Ethan De Angelo 12/18/2020
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date